

JASON S. LEIDERMAN, SBN 203336
jay@criminal-lawyer.me
LAW OFFICES OF JAY LEIDERMAN
5740 Ralston Street, Suite 300
Ventura, California 93003
Tel: 805-654-0200
Fax: 805-654-0280

Attorney for Plaintiffs
JAMES MCGIBNEY
VIAVIEW, INC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES MCGIBNEY, an individual, and
VIAVIEW, INC, a corporation,
Plaintiffs,

vs.

THOMAS RETZLAFF, an individual,
NEAL RAUHAUSER, an individual,
LANE LIPTON, an individual, and
DOES 1-5, individuals whose true names are not
known,
Defendants.

Case No.: 5:14-cv-01059 BLF

**DECLARATION OF JAY LEIDERMAN IN
SUPPORT OF REQUEST TO ACCEPT LATE
FILING OF DOCUMENTS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

DECLARATION OF JASON S. LEIDERMAN

1. I am an attorney duly licensed to practice law in the State of California. I represent Petitioners ViaView, Inc. and its employees, including James McGibney.
2. If called to testify I would answer the following on personal knowledge.
3. We were applied for and were given an extension of time to file our response to Defendant Retzlaff's Special Motion to Strike. We were to file on or before Friday, October 10th.

**DECLARATION OF JAY LEIDERMAN IN SUPPORT
OF HIS REQUEST TO HAVE THE COURT ACCEPT
LATE FILED DOCUMENTS DUE TO TECHNICAL
FAILURE.**

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- 1 4. After receiving the extension, I received an email from the NDCA ECF system that the system
2 would go down at 5 pm on Friday. Rather than ask for a second extension of time, we worked
3 diligently to get these documents perfected.
- 4 5. Anticipating that outage, we completed and began to file our documents at 4:25 PM on October
5 10th. There is doubtless an electronic record of this in the ECF system.
- 6 6. Our documents were lengthy and included 44 separate documents totaling over 100 megabytes
7 (MB), many of which were just below the 5 MB ECF limit. Nonetheless, it should not have
8 taken more than 35 minutes to upload such documents.
- 9 7. At 5:02 PM, the upload timed out. We tried twice more, to no avail. I learned a few moments
10 ago that ECF came back up today at about 11 am. It was set to resume on Monday, October 13th
11 at noon.
- 12 8. Based upon this knowledge, I came in today, Sunday the 12th of October, to file these
13 documents.
- 14 9. To ensure that the technical problem we encountered was not the result of the large size of our
15 filing, we have attempted to reduce the sizes of the .pdf files for the exhibits. We did not have
16 time before the 5:00 pm deadline on Friday to make these changes.
- 17 10. Accordingly, Counsel offers this late-filed document due to a technical outage within the
18 meaning of local rule 5-1(e)(5) “**Technical Failure**. The Clerk shall deem the ECF system to be
19 subject to a technical failure on a given day if the system is unable to accept filings continuously
20 or intermittently over the course of any period of time greater than one hour after 12:00 noon that
21 day. Filings due on the day of a technical failure which were not filed solely due to such
22 technical failure shall be due the next court day. Such delayed filings shall be accompanied by a
23 declaration or affidavit attesting to the filer’s failed attempts to file electronically at least two
24 times after 12:00 noon separated by at least one hour on each day of delay due to such technical
25 failure.”
- 26 11. Furthermore, I hereby attest that I have on file all holograph signatures for Adam Steinbaugh’s
27 “conformed” signature (/S/) within this efiled document.
28

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on October 12, 2014, at Ventura, California.

3
4 By:_____/s/ Jay Leiderman_____

5 JASON S. LEIDERMAN

6 Counsel for Plaintiff ViaView
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NOTICE TO THE COURT THAT THOMAS C.
RETZLAFF HAS BEEN PERSONALLY SERVED WITH
THE RESTRAINING ORDER PAPERS

Page 1

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